

Submission to the Senate Employment, Workplace Relations and Education Committee in relation to the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006

1 Summary

- 1.1 Telstra Corporation Limited (**Telstra**) is a staunch supporter of the Federal occupational health and safety (**OHS**) and workers' compensation schemes. We believe that, in combination, the systems are an effective and efficient driver of prevention and where necessary, rehabilitation and compensation. Telstra has articulated this view publicly since our submission to the Productivity Commission Inquiry into National Workers Compensation and Occupational Health and Safety Frameworks (2003).
- 1.2 Telstra urges the Senate to pass the proposed amendments. They address anomalies in the *Safety, Rehabilitation and Compensation Act 1988* (**SRC Act**) that result in increased costs on employers and impose unintended or unfair compensation obligations.

2 Background

- 2.1 Telstra is Australia's leading telecommunications and information services company, offering a full range of services and competing in all telecommunications markets throughout Australia and certain overseas countries. It has approximately 40,000 employees engaged in a variety of white and blue collar work.
- 2.2 Telstra is the holder of a licence under the SRC Act and has held such a licence since the introduction of the licensing arrangements in 1992. Prior to that, Telstra was a self-administrator of the scheme. In 2006 Telstra's licence was extended for four years.
- 2.3 Telstra takes its OHS, rehabilitation and workers' compensation obligations seriously. It voluntarily reports progress in regards to OHS through its Annual Report and to the Safety Rehabilitation and Compensation Commission as part of its licence conditions. Comcare has granted Telstra Tier 3 status for prevention, the highest recognition level, within the Federal scheme.

3 The Federal OHS and Workers' Compensation Schemes

- 3.1 The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (**OHS Act**) and regulations operate in concert with the SRC Act to provide an effective and efficient vehicle for the delivery of injury prevention, rehabilitation and compensation.
- 3.2 However, the SRC Act contains a number of anomalies that constrain the cost effectiveness of the scheme. This submission addresses those anomalies.

4 The Proposed amendments

- 4.1 Telstra strongly supports the purpose and intent of the proposed amendments.

- 4.2 It is Telstra's submission that the proposed amendments are an overdue and necessary curtailment of the ever expanding liability being imposed by tribunals in the Federal workers' compensation scheme.
- 4.3 If introduced, the proposed amendments will ensure that compensation is not payable in anomalous or absurd situations.

5 Comments on specific proposals

5.1 Amend the definition of 'disease' to strengthen the connection between the disease and the employee's employment

- 5.1.1 Notwithstanding Parliament's intention that there be a close connection between the disease and the employment in which the employee is engaged, court and tribunal decisions have had the effect of significantly eroding this principle. Many examples of such erosion may be found in the decisions.
- 5.1.2 Telstra agrees with the recommendation made by the Productivity Commission in its 2004 report on *National Workers' Compensation and Occupational Health and Safety Frameworks* (the **Report**) that the minimum benchmark for defining work related injury or death should be "significant contributing factor".
- 5.1.3 Telstra believes that a clear nexus between the claimed disease and employment is the appropriate basis on which employer obligations to fund compensation should be based. The nature of many diseases is such that it is often easy to establish a trivial contribution by employment with the result that significant cost is borne by employers when it would be more just for those costs to be borne by the health system and the wider community.
- 5.1.4 This is particularly true of some mental illnesses. It is rare for the medical profession to be able to neatly define, for example, the cause of anxiety or depression and it is an integral part of the medical history taking process to query the working environment. Work is a basic part of people's lives but it does not follow that just because a person works, mental illness is work related.
- 5.1.5 The amendments seek to align the SRC Act more closely with the philosophical underpinning of workers' compensation systems. In a general sense, it is unfair to expect an employer or the shareholders of an employer to fund compensation for disease where there is at best a weak connection between that disease and employment. Situations where this occurs are evidence of regulatory creep.

5.2 Amend the definition of 'injury' to exclude injuries arising from reasonable administrative action taken in a reasonable manner

- 5.2.1 Telstra has considerable experience of workers' compensation claims being made by employees to thwart legitimate administrative action. Given the generous income supporting provisions for incapacity, coupled with the difficulty in sourcing pre-injury duties, some employees anticipating disciplinary action see a workers' compensation claim as an available risk management strategy.
- 5.2.2 Telstra agrees with the recommendation made in the Regulation Impact Statement contained in the Explanatory Memorandum that Option 3 be adopted.

5.3 Remove claims for non work-related journeys and recess breaks where the employer has no control over the activities of the employee

- 5.3.1 Continued coverage under the SRC Act for non-work related journeys and recess breaks is inconsistent with the objects of, and obligations imposed by, the OHS Act. "Control" is prime factor when considering application of the OHS Act and fairness and consistency dictate that control over activities and the capacity to influence the

likelihood and severity of injury ought to be the basis of employer obligations to pay workers' compensation for injured workers.

Recess breaks

5.3.2 The SRC Act currently requires Telstra to pay compensation where an employee walks across the road to a shop to purchase lunch, slips and falls suffering injury. In these circumstances Telstra has no control over, among other things, the shop, the floor or the footwear being worn by the employee. Telstra believes it should not bear the cost of treatment for such an injury. Such costs, in Telstra's view should be borne through the health system and, where applicable, recovery through public liability.

Journeys

5.3.3 Generally, the injuries suffered by employees as a result of journey incidents result in significantly more time-off work than other injuries and are proportionally more costly. Such claims represent approximately 11% of Telstra's annual workers' compensation claims and approximately 23% of time lost due to injury. (See Table 1.)

Table 1 Telstra Commuting Injury Statistics

	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07 YTD
Commuting Claims as a percentage of All Claims	11%	10%	11%	12%	13%	9%
Percentage of total time lost due to injuries received while commuting	20%	20%	22%	24%	25%	21%
Percentage of total spend due to injuries received while commuting	11%	11%	13%	11%	16%	15%

5.4 Amend the calculation of retirees' incapacity benefits to take account of changes in interest rates and superannuation fund contributions

5.4.1 Telstra agrees with the proposed amendment.

5.5 Update measures for calculating benefits for employees, including the definitions of 'normal weekly earnings' and 'superannuation scheme'

5.5.1 Telstra agrees with the proposed amendment.

5.6 Ensure that all potential earnings from suitable employment can be taken into account when determining incapacity payments

5.6.1 Telstra considers it appropriate and timely that the definition of suitable employment be amended to prevent an employee relying on the current definition and making no effort to seek gainful employment.

5.6.2 Presently, "suitable employment" for a permanent Telstra employee who has not subsequently terminated his/her employment, is employment with Telstra. This can have absurd consequences. For example, in the case of *Re Lyons and Telstra Corporation Limited*¹ the AAT found that Telstra "did not escape its obligations imposed upon it by the s 4(1) definition of "suitable employment" paragraph (a) by the

¹ (2001) 66 ALD 159

mere act of justifiable termination of employment". An appeal to the Federal Court² was dismissed.

5.6.3 In its present form, the definition impedes Telstra's disciplinary process and often results in incongruous situations such as that illustrated in the *Lyons* case. In such circumstances, there is no incentive for the employee to find alternative employment and Telstra remains liable to pay compensation to a person who, in other circumstances, would obtain new employment.

5.7 Enable determining authorities to directly reimburse health care providers for the cost of their services to injured employees

5.7.1 Allowing Telstra to make a payment under s 16 directly to the medical provider, where the account has not been paid by the employee, will result in costs savings and is supported by the Company.

5.8 Increase the maximum funeral benefits payable

5.8.1 No comment.

Corporate Health Safety and Environment
Telstra Corporation Limited
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² *Telstra Corporation Limited v Lyons* (2003) 132 FCR 548